



William Ray
Partner
Tel. +44 (0)20 7333 6201
wray@geraldeve.com



Paul Greenwood
Partner
Tel. +44 (0)20 3486 3721
pgreenwood@geraldeve.com

THE CHARITIES ACT 2022



The Charities Bill received Royal Assent on 24 February 2022 and has now passed into law as the Charities Act 2022 (the 'Act').

It has long been recognised that charities are subject to a heavy administrative burden and that often this impacts on a charity's ability to further its charitable purposes.

The Act is welcomed by the sector and while the changes are largely technical, they are designed to make a positive and practical difference to charities.

The Act implements the majority of recommendations made by the Law Commission in its 2017 report 'Technical Issues in Charity Law' and aims to reduce the administrative burden on charities, saving both time and money, whilst allowing charities to focus their efforts on their charitable work.

This briefing note considers some of the key provisions of the Act specifically affecting charity property.

Advice on disposals of charity land

The Act seeks to protect charity land and ensure that charities can deal with disposals of charity land in a way that is proportionate and appropriate.

The Act introduces additional flexibility in terms of who can provide advice, what the advice should cover, the form it should take and the requirement to advertise. This more flexible, less prescriptive approach is likely to be welcomed by charities which regularly dispose of property but may make the rules harder to navigate for less experienced trustees.

Who can provide advice?

The category of those who can give advice to charities on disposals of their charity's land has been expanded. The Act substitutes reference to a "qualified surveyor" with "designated adviser", which reflects an expanded category of advisers who are not members of the Royal Institution of Surveyors' (RICS).

This will allow advisers from The National Association of Estate Agents and The Central Association of Agricultural Valuers to give advice to charity's on disposals, where applicable.

It also allows for that advice or report to come from charity trustees, officers and employees who are qualified, including where the report is provided in the course of employment.

It has yet to be seen whether charities will be inclined to adopt this option or prefer to rely on insured professionals against which recourse could be sought in the event of errors.

Trustees are likely to want to be satisfied that, whichever type of designated adviser they instruct, they;

- have the appropriate qualifications
- are professionally regulated
- have suitable professional indemnity insurance in place, where appropriate
- do not have any interest that conflicts with that of the charity, particularly if he or she is to be paid for the advice

What should the advice cover?

At present, trustees are required to obtain a written report covering the matters specified in the Charities (Qualified Surveyors' Reports) Regulations 1992 (the Regulations). The Act significantly simplifies this requirement by replacing the regulations with a requirement for a designated advisor to provide advice principally around the following matters;

- the value of the relevant land
- any steps which could be taken to enhance that value
- whether and, if so, how the relevant land should be marketed
- anything else which could be done to ensure that the terms on which the disposition is made are the best that can reasonably be obtained for the charity
- and any other matters which the adviser believes should be drawn to the attention of the charity trustees

On the one hand, this should give advisers greater flexibility to advise on the matters which they regard as most significant to the transaction in question; on the other hand, there is a risk that potentially important matters, such as the existence of unhelpful restrictive covenants, may be overlooked by a less experienced adviser.

Requirement to advertise?

The Act removes the requirement for charity trustees to advertise a proposed disposition in the manner advised in a surveyor's report, or for the reports to contain the information prescribed by regulations made by the Secretary of State (s119(4), 2011 Act).

Charity to charity disposals

At present, charity to charity transactions for less than best price are generally excluded from the scope of Part 7.[4]

The Act recognises that in certain cases this approach is not appropriate, particularly where a charity is making social investments using property where the financial return generated by a transaction may still be a motivating factor, in addition to a charitable return.

This exception will no longer apply to a commercial transaction where a transaction is intended to achieve the best price that can reasonably be obtained for the disposing charity, or a social investment.

Implementation

The Act makes amendments to The Charities Act 2011 and will be implemented over the next 12 to 18 months.

If you have any questions or require any advice on how The Charities Act 2022 may affect you and your charity's property, please get in touch with **Paul Greenwood** or **William Ray** from our specialist Charity Property Team.

Disclaimer & Copyright

This briefing note is short summary and is not intended to be definitive advice. No responsibility can be accepted for loss or damage caused by any reliance on it.

© All rights reserved. The reproduction of the whole or part of this publication is strictly prohibited without permission from Gerald Eve LLP.